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THE RELATION OF THE GOVERNMENT TO BUSINESS ¹

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THE business of this country finds itself to-day in a most unhappy situation. Twenty-one years ago, when the trust movement was still in its infancy, a statute was passed which was allowed during three successive administrations to remain practically inoperative. In that period industrial combinations embracing a large part of the manufacturing and mining industry of the United States were organized. Then, under an aggressive president, the necessary measures were taken to secure the enforcement of the law. Suits were begun against several of the largest of the industrial combinations and within six months the United States Supreme Court has un-animously decided that the first two of these combinations to be passed upon fall clearly under the condemnation of the statute. The present administration has declared its intention to continue the rigid enforcement of the law. As an evidence of the seriousness of its purpose it has just begun suit to dissolve the billion-dollar Steel Corporation. Similar suits are pending against nearly a dozen other large corporations and scores of lesser ones are living in fear lest their turn may come next.

So far as I can see, this vivisection of great business organizations is likely to go on. Some persons were encouraged by the pronouncement of the Supreme Court in the recent decisions that the "rule of reason" must prevail. We must not forget, however, that the "rule of reason" that is to be applied is common-law reason, not common-sense reason. There is little else in the language of these decisions to justify the expectation that relief will come from that quarter. The outlook in Congress is even less promising. A Republican president, a divided Senate

¹ An address delivered at the annual dinner of the Academy of Political Science, November 10, 1911.

and a Democratic House constitute a combination, if not in restraint of trade, at any rate in restraint of legislation needed to relieve trade. It seems probable therefore that prosecutions, dissolutions and reorganizations will continue to darken the business horizon at least for many months to come.

Mr. Morgan is credited with the aphorism that the recent trust decisions are like an order to a cook to "unscramble" the eggs which have just been prepared. To this the government may quite justly retort: "Gentlemen, you scrambled these eggs after Congress told you not to!" But the situation is too grave to be disposed of by an interchange of pleasantries. Will the prohibitions of the Sherman Act, now that the law is being made effective, really result in a satisfactory solution of the trust problem? Our coming together this evening is pretty clear evidence of a wide-spread belief that it will not.

As a preparation for discussing the policy toward industrial combinations which this country should adopt, may I invite your attention for a moment to what is going on in Germany? That country has never enjoyed the blessings of the English common law. This has meant that there has never been in the German legal system any condemnation of combinations in restraint of trade or monopolies as such. On the contrary, the courts have recognized from the first the potentialities for good in the combination movement, and the government has sought to direct and regulate it rather than to suppress it. German manufacturers were as quick as our American manufacturers to realize that modern conditions call, in Mr. Gary's phrase, for a policy of reaching for your rival's hand rather than for his throat. In Germany, as in the United States, the resulting picture of business competitors clasping hands in friendly coöperation has been clouded by the danger to which Mr. Dickson has alluded that they might reach for the consumer's throat. Here the government has stepped in. At the same time that it has allowed pooling or cartell agreements to have the binding force of legal contracts it has insisted on publicity of cartell operations. As owner and operator of the railroads of the country, it has, of course, never been troubled by the rebate or other unfair advantages in the domain of transportation. Finally, when it has

believed it necessary, it has taken a hand itself in the game of combination, by becoming, through the Prussian potash mines, for example, a member of the cartell. As such it has asserted its right to control cartell policies as the public interest has required.

In consequence of this policy of publicity and wise regulation, of which a rigid corporation law has of course been a part, there has never grown up in Germany any anti-combination sentiment such as we have known in this country. In fact so favorable is German public opinion to the cartells that when the Chancellor of the Exchequer had occasion a few years ago to announce to the Reichstag that the Westphalian coal cartell or trust had been successfully reëstablished, his statement was greeted with cheers by the representatives of all parties. Imagine Mr. MacVeagh announcing to the House of Representatives that notwithstanding rumors to the contrary, the anthracite coal combination, let us say, was still in full and successful operation and having Democrats, Republicans, insurgents and Mr. Berger break out into spontaneous applause!

Such has been Germany's policy with reference to industrial combinations. No one would be so rash as to claim that it has yet assumed final form. There is very general agreement, however, that it has contributed, and contributed largely, to the great business prosperity which that country has on the whole enjoyed in recent years.

Is a policy which has proved so successful for Germany impossible for the United States? We are told that it is, and for two reasons. It must lead eventually to socialism, and meantime, it is paternalistic. It is amazing how often the bugaboo of socialism has been invoked to put an end to the intelligent discussion of public questions in this country. For many persons the mere assertion that a proposed policy will lead to socialism appears to settle the question. I do not wish to pose as an economic prophet. I think I am safe in saying, however, that if there is one principle that is proved by economic history it is that progress is never long in a straight line toward a definite goal, but rather that it is zigzag. In one period government regulation justified by contemporary conditions will be

pushed to an extreme. There follows a *laissez-faire* reaction which carries the policy of non-interference to unwarranted lengths. The reaction from this is again toward government regulation.

Present-day business conditions call, in my judgment, for a considerable extension of government regulation. That this will lead to socialism I do not believe. As in the past, so in the future, after we have moved along this line for a time a reaction is bound to set in, which will start the car of progress in a new direction. The policy of government regulation is no doubt a policy opposed to the *laissez-faire* theory of government. For those who believe confidently that socialism is the goal toward which we are moving it must, of course, seem a step toward socialism, but for those of us who regard the policy of socialism as impracticable it seems rather a step calculated to take the wind out of the sails of the socialists. The present spread of socialism is due to the existence of evils which we must all deplore. Every successful effort to remove these evils will constitute an argument against the necessity of socialism. From this point of view, governmental regulation of industrial combinations is a policy that will help to make socialism unnecessary, rather than a policy that will tend to bring it about.

Whether this view be correct or not, socialism, actual socialism, is not going to be tried wholesale but piecemeal. The idea that by some sudden revolution the government is to assume the herculean task of owning and operating all national industries belongs to the nursery stage of social speculation. It is so obvious that such an experiment would result in disaster that sensible socialists—and there are many sensible socialists now-a-days—want it as little as do non-socialists. If, then, socialism must be introduced piecemeal, if introduced at all, why should we be diverted from a policy which is in itself wise and beneficent by the fear that it may lead to socialism? Is it not truer statesmanship to adopt the good that we see and reserve our opposition to an extension of governmental activities until such extension appears to us objectionable? This may be a policy of opportunism, but I submit that it is also the policy of common sense.

The charge that government regulation of industrial combinations is paternalistic seems to me equally inconclusive. Certainly in this country our whole form of government makes "paternalism" applied to state activities a misnomer. A government of the people, by the people and for the people signifies not "paternalism" but "fraternalism." All about us are evidences that fraternalism, the brotherhood of man, is becoming more of a reality and less of an empty phrase. I believe in this fraternalism for business as for other departments of life. When the prosecuting officers of the government solemnly aver in their brief against the Steel Corporation, as one evidence of guilt, that "when bidden by the chief executive of the Corporation, they (the officers of other steel companies) came at any time, from any distance, ready, willing and anxious to turn over to him and his friends all that was in their minds and in their hearts concerning their own business," I can only wonder at their lack of a sense of humor. If business men who have learned by sad experience that reckless competition is suicidal and that frank coöperation is better for all concerned, cannot act on that conviction without violating the anti-trust law, all that I have to say is, so much the worse for the law. Such legislation stands self-condemned, since to prevent men who hold such views from meeting together to discuss and agree about their common interests is practically impossible and economically undesirable.

It is unnecessary before this audience to enlarge on the advantages of combination. I believe that these advantages are real and substantial, not only for those in the combination but for the public. But if we are to enjoy these advantages in this country, if we are to permit this fraternalism in business, is it not clear that the big brother of us all, the government of the United States, must be a party to it? We must have full publicity. We must have a federal incorporation law that will put a stop to inflated capitalizations, that will protect minority stockholders and that will hold directors up to the same high standard of responsibility that we impose on trustees. We must have a commission like the Interstate Commerce Commission, to supervise industrial combinations as the railroads are supervised.

Finally, and more important than all else, we must have an attitude toward the government that will cause any one of us cheerfully to lay aside his private interests to serve the state in time of peace, as we should all be willing to serve it in time of war.

How are we going to get such a system in the United States? That, gentlemen, rests with you and the thousands of other able business men throughout the country. For, if the relation of the government to business is unsatisfactory, what is to be said of the relation of business to the government? You business men have been so absorbed in your private affairs that you have forgotten your duty as citizens. Leaders in business and in philanthropy, you have allowed leadership in the far more important field of politics to fall into other and less competent hands. Worse than this, as business men your relation to the government has not only not been helpful and elevating; it has been demoralizing and corrupting. If the law of the land is to-day out of harmony with your interests, even inimical to them, you are yourselves to blame.

A striking illustration of the indifference of the business men of the community to their civic responsibilities was afforded in this city only last week. Last July the legislature added important new positions to the New York department of labor. For reasons which it would perhaps be best not to inquire into too minutely, the civil service commission exempted these positions from the operation of the civil service law. Through the efforts of various reform organizations the commission was induced to hold a public hearing in reference to its action in this city last Tuesday. At that hearing were representatives of these reform organizations and several public-spirited citizens, but not a single representative of the hundreds of influential employers' associations in this state. The just and impartial enforcement of the labor law should be as much the concern of the right-minded employer as of the employee. And yet this is a fair illustration of the amount of assistance we are getting from the employers of this state in our efforts to make the department of labor a highly efficient arm of the state government.

The attitude which this incident typifies must be changed and changed radically. To bring about the modifications in our policy toward combinations which the common sense of this audience knows to be desirable, you must organize,—not to oppose the government as some have suggested, but to carry on a nation-wide campaign of education—self-education as regards your duties toward the state; education of others as regards an understanding of the legitimate needs of big business. If as a result of this conference to-night such a movement can be started, we shall not have come together in vain.

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